HIGH COURT OF CHHATTISGARH AT BILASPUR

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(Division Bench)

CORAM : Hon'ble Shri Vijay Kumar Shrivastava, &
Hon'ble Shri Dhirendra Mishra, J.

Criminal Appeal No.467/1999

Appellant : **Barat Ram, s/o. Madhoram Gond,**
Aged about 32 years,
Occupation – Cultivation,
R/o. village Kaharchuan,
PS: Lailunga, Dist. Raigarh.

Versus

Respondent : State of M.P. through SHO,
PS, Lailunga, Dist. Raigarh.

Present:

Ms. Nirupama Bajpai, learned counsel for the appellant.
Mr. M.P.S. Bhatia, counsel for the respondent/State.

J U D G M E N T

(Dated 25/03/2006)

Per Vijay Kumar Shrivastava, J.

This appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 20/01/1999 passed by IInd Additional Sessions Judge, Raigarh in S.T.No.124/97 by which the appellant has been held guilty for committing the murder of his own brother

Chamar Sai and was sentenced to undergo imprisonment for life under Section 302 of the I.P.C.

2) Appellant Baratram and deceased Chamar Sai were brothers and both lived in the same house. They were in inimical terms on the score of partition of their land and house. Although they were living in common roof, but in separate rooms. On 24/05/1997 a dispute arose over the electricity meter. In the evening when deceased returned from his field, again some altercation took place between them. Deceased Chamar Sai ran towards the gally from his house and the appellant followed him holding an iron made weapon in his hand. Appellant caught the deceased, threw him on the ground, stood over his chest and by jumping and dancing over the body of the deceased started pressing his neck with foot. Witness Prithvilal and Ichcharam came there and repelled the appellant from there. By that time Rampyari, wife of deceased and one witness Mayaram also came to the spot and gave drinking water to deceased. The appellant again came back running and again stood over the chest of the deceased saying he would kill him. He jumped on the neck of the deceased and kicked his testicles. The deceased died on the spot. The appellant after the death of deceased Chamar Sai, fled away from the scene of occurrence.

3) Prithvilal who witnessed the incident lodged the first information report in Police Station Lailunga. On his report the investigation took place. Inquest report of deceased Chamar Sai was prepared by the Investigating Officer. Dead body of Chamar Sai was sent for autopsy to the Community Health Centre,

Lailunga. Dr. Shailendra Upadhyay who conducted the postmortem has described the injuries found on the body of deceased Chamar Sai and opined that cause of death was asphyxia due to compression of chest and the death was homicidal in nature. During investigation control and bloodstained soil and one towel were recovered from the spot and the same were seized. One knife was seized from the appellant. Statements of witnesses were recorded and after completion of investigation, challan under Section 302 of the I.P.C., was filed in the Court of Judicial Magistrate First Class, Katghora, who committed the case to the Court of Sessions for trial.

4) Charge under Section 302 of the IPC was framed against the accused/appellant and the same was read over and explained to him who abjured the guilt. Appellant claimed himself to be innocent and pleaded that he has been falsely implicated in the crime. Learned trial Court after due appreciation of the evidence available on record held the appellant guilty of offence punishable under Section 302 of the IPC , therefore, convicted and sentenced.

5) Learned trial Court after close scrutiny of the evidence of Dr. Shailendra Upadhyay (PW/10) and due consideration of the autopsy report (Ex.P/10) held that the death of Chamar Sai was homicidal in nature. Dr. Shailendra Upadhyay (PW/10) in his evidence has deposed that on postmortem examination of the body of the deceased Chamar Sai, he found the following injuries on his body.

1) abrasion over neck and chest, abrasion found on

chest were in length 10" and breadth at one end 4", at another end 3" and at the middle part 4";

2) one lacerated wound on left shoulder admeasuring 1" x 2" muscle deep;

3) abrasion on right lower chest in the size of 2" x2";

4) abrasion on right scrotum skin in the size of 5" x 6" . blood clots were present underneath the skin of neck and whole peritoneum cavity was filled with blood."

The Doctor has further deposed that left third rib, fifth rib and the right third rib were found fractured. In his opinion the cause of death was due to asphyxia due to compression of chest. The above evidence does not suffer from any infirmity which may lead to disbelieve it. Appellant has not disputed the death of Chamar Sai to be homicidal even from the oral evidence and the report Ex.P/10, it is established that deceased Chamar Sai received various injuries and died due to asphyxia as a result of injuries caused to him and his death was homicidal in nature.

6) Learned trial Court relying upon the statements of the eye-witnesses held that the injuries found on the body of deceased were caused by the appellant who having the knowledge that the injuries caused by him, would cause the death of deceased Chamar Sai has caused those injuries and accordingly held that the appellant caused the death of Chamar Sai intentionally by inflicting various injuries.

7) Prithvilal (PW/1) who is the author of first information report (Ex.P/1) in his statement has deposed that he saw Chamar Sai lying on the ground and appellant pressing his neck with his foot.

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Chamar Sai was raising alarm, he called Ichcharam and they repelled the appellant from there and gave drinking water to Chamar Sai. By that time Mayuaram and Rampyari also came there. The appellant again came on the spot and assaulted Chamar Sai with his foot on his chest. The appellant also kicked the testicles of the deceased thrice with his foot. Chamar Sai died on the spot. Although Ichcharam (PW/2) has been declared hostile by the prosecution, yet from his statement, presence of deceased and appellant on scene of occurrence is evident. Rampyari (PW/7) wife of the deceased, in her evidence deposed that the appellant standing over the chest of her husband jumped several times. Although she made exaggeration regarding one assault which is said to have been caused by the appellant with axe but that alone is not sufficient to discredit her whole evidence which is duly corroborated by other evidence on record and not infirm so as to discredit it. Mayaram, (PW/9) has also stated in his statement that the appellant standing over the chest of deceased was pressing his chest and was also jumping over the chest of Chamar Sai. Appellant Baratram also kicked thrice on the testicles of Chamar Sai with his foot and Chamar Sai died on the spot.

8) So far as evidence of Prithvilal (PW/1), Rampyari (PW/7) and Mayaram (PW/9) which relates to causing injuries by the appellant to the deceased is concerned, the same does not suffer from such infirmity which may lead to disbelieve their version. The oral evidence is supported by the report of Ex.P/1 i.e., FIR and also finds support from the medical evidence of Dr. Shailendra Upadhyay (PW/10) and his report (Ex.P/10). Therefore, it is

established that the injuries caused to deceased Chamar Sai resulting to his death were caused by the appellant.

9) From the evidence on record, it is evident that the appellant stood over the chest of deceased Chamar Sai and injured him by jumping and dancing over his chest, when he was repelled and the witnesses were trying to save the life of Chamar sai, the appellant again came back and rode again over the chest of deceased and kicked his testicles as a result of which Chamar Sai spontaneously succumbed to the injuries. Thus, from all these evidence and circumstances, it has been established that the appellant knowingly and intentionally caused various injuries that too on the vital parts of the body of deceased Chamar Sai and thereby killed his own brother.

10) In view of the foregoing reasons, we are of the considered opinion that the impugned judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 of the IPC for causing death of his brother intentionally, does not suffer from any illegality or infirmity. The appeal being devoid of merits deserves to be dismissed.

11) In the result, the appeal fails and is hereby dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
Dhirendra Mishra
Judge

Khan/
raju